

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5269

IN THE MATTER OF:

Served February 5, 1998

Investigation of Unauthorized)
Operations of SAFE RIDE SERVICES,)
INC.)

Case No. MP-97-83

This investigation was initiated on November 4, 1997, in Order No. 5223 for the purpose of determining whether respondent transported passengers for hire between points in the Metropolitan District in 1997 without a certificate of authority. In early 1997, respondent filed an application for WMATC authority to perform a contract tariff effective February 1 of that year.¹ The application was conditionally granted in Order No. 5059, served April 21, 1997, in Case No. AP-97-03, but respondent never satisfied the conditions of the grant (which included the filing of an amended contract tariff), and the certificate of authority was never issued.² An article in the September 24, 1997, issue of the Gazette newspapers made it appear that respondent had begun performing the contract in August 1997 notwithstanding the lack of WMATC authority.

Based on the newspaper article and the status of respondent's application, we directed respondent to produce any and all records in its possession, custody or control relating to its operations in the Metropolitan District. In response, respondent filed two affidavits from its National Director of Operations, Robert Findlay, in which he admits that respondent performed the contract from August 1, 1997, through November 27, 1997.³

The Compact provides that a carrier that knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation.⁴ The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The terms "willful" and "willfully" do not

¹ Although the contract stated it was effective January 1, 1997, the proposed contract tariff cover sheet attached to the contract specified an effective date of February 1, 1997.

² The grant is now void, as noted in Order No. 5223.

³ Affidavit of Robert Findlay, MP-97-83 (Dec. 22, 1997) [Findlay Aff. (12/22)]; Affidavit of Robert Findlay, MP-97-83 (Dec. 4, 1997) [Findlay Aff. (12/4)].

⁴ Compact, tit. II, art. XIII, § 6(f).

⁵ In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 at 7 (June 26, 1997); DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 at 1-2 (Dec. 20, 1993).

mean with evil purpose or criminal intent; rather, the terms describe conduct marked by careless disregard whether or not one has the right so to act.⁶ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance; violations occurring thereafter are viewed as knowing and willful.⁷

There is no question that respondent violated the Compact by performing the contract. We would not have conditionally approved respondent's application to perform the contract if WMATC authority were unnecessary. Likewise, there is no question that respondent acted knowingly and willfully. When respondent filed its application for WMATC operating authority on December 31, 1996, it swore under oath that it was familiar with Compact requirements and would faithfully comply. Respondent's unlawful operations after that date are viewed as knowing and willful.⁸

Respondent attempts to deflect this finding by asserting through its Director of Operations, Mr. Findlay, that respondent's former president, Lewis Levy, was the person responsible for "providing the documentation as required by the Commission."⁹ According to Mr. Findlay, Mr. Levy left the company before completing the contract amendments required by Order No. 5059 and without advising anyone that the amendments were still undone.¹⁰ This explanation does not help respondent. Employee negligence is no defense.¹¹

We also note that Mr. Levy was not the only person assisting respondent in its prosecution of the application. Respondent was ably represented in the application proceeding by its attorney, John Ballenger. According to the proposed tariff filed with the application, Mr. Ballenger was the person authorized to file respondent's tariff on its behalf -- not Mr. Levy. In addition, Mr. Findlay submitted an affidavit¹² in support of respondent's May 21 request for an extension of the filing deadline,¹³ and Mr. Findlay submitted a second affidavit¹⁴ in support of respondent's June 20 request for a further extension of the filing deadline,¹⁵ as well as in partial satisfaction of the conditional grant. Neither request was

⁶ Order No. 5113 at 7; Order No. 4226 at 2.

⁷ Order No. 5113 at 7; Order No. 4226 at 2.

⁸ Order No. 5113 at 7.

⁹ Findlay Aff. (12/22) at 1.

¹⁰ Id. at 1; Findlay Aff. (12/4) at 2.

¹¹ Order No. 4226 at 2.

¹² Affidavit of Robert Findlay, AP-97-03 (May 9, 1997).

¹³ Request for Extension of Time for Good Cause Shown, AP-97-03 (May 21, 1997).

¹⁴ Affidavit of Robert Findlay, AP-97-03 (June 10, 1997) [Findlay Aff. (6/10)].

¹⁵ Second Request for Extension of Time for Good Cause Shown, AP-97-03 (June 20, 1997) [Second Request].

supported by an affidavit from Mr. Levy. This is particularly noteworthy with respect to the second request since one of the grounds relied on in that request was that the other party to the contract needed more time to complete its "processing of the contract amendment."¹⁶

Mr. Findlay stated in his June 10 affidavit that he was familiar with respondent's application and with the order conditionally approving it.¹⁷ Thus, at all relevant times, respondent's Director of Operations was aware that respondent could not commence operations without a certificate of authority in hand. There is nothing in the record suggesting that Mr. Levy, or anyone else, misled Mr. Findlay into believing a certificate of authority had been issued as of August 1.

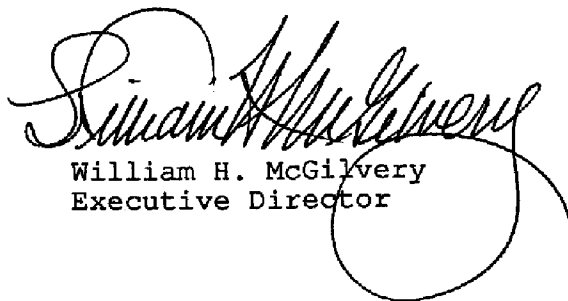
We will assess a civil forfeiture against respondent in the amount of \$250 per day¹⁸ for 119 days, for a total of \$29,750. We will suspend all but \$4,500, in recognition of respondent's having filed an application prior to commencement of the contract.¹⁹ Failure to pay the net forfeiture in timely fashion shall result in reinstatement of the full \$29,750.

THEREFORE, IT IS ORDERED:

1. Respondent shall pay to the Commission within thirty days from the date of this order, by money order, certified check, or cashiers check, the sum of four thousand five hundred dollars (\$4,500), for knowing and willful violations of the Compact.

2. That the full civil forfeiture of \$29,750 shall stand reinstated and become immediately due and payable upon respondent's failure to timely pay the net forfeiture of \$4,500.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:


William H. McGilvery
Executive Director

¹⁶ Second Request at 2.

¹⁷ Findlay Aff. (6/10).

¹⁸ See Order No. 5113 at 8 (operation of contract without authority assessed at \$250 per day); Order No. 4226 at 3 (same).

¹⁹ See Order No. 5113 at 8 (recognizing submission of application before commencement of contract); Order No. 4226 at 3 (recognizing attempt at same).